

APPEAL NO. 010161

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 7, 2000. The hearing officer determined that respondent (claimant) sustained a compensable injury on _____, and that she had disability from May 22, 2000, through the date of the hearing. Appellant (carrier) appealed these determinations on sufficiency grounds. The carrier also asserts that the hearing officer erred in failing to presume that certain evidence favored carrier. The claimant responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

We have reviewed the complained-of fact determinations and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The carrier also contends that claimant did not exchange certain alleged evidence that might show that claimant had been treated in the past for back problems. The carrier asserts that the hearing officer should presume that this alleged evidence would show a prior back injury. The record does not show that claimant failed to disclose or exchange evidence regarding prior treatment for a back condition. The claimant testified that she had prior hip and sciatic problems several years ago and that, shortly before the injury, she had been receiving chiropractic massage for tightness in her back. The carrier contended that the claimant had not been forthright about whether she had prior back problems and made this assertion at the hearing. The hearing officer heard this evidence, discussed the claimant's testimony in this regard, and made his fact findings based on the evidence he found to be credible. The hearing officer stated that claimant did have a history of back problems, but stated that he found claimant did sustain a compensable injury on _____. We perceive no error.

We affirm the hearing officer's decision and order.

Judy L. S. Barnes
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge